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6
7 Attorneys for Plaintiff
United States of America

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 2005 INFINITY FX35, CA. LICENSE
14 6GYJ314, VIN: JNRAS08U75X109043,

15 Defendant.
16

Case No. **'19CV2311 DMS BGS**

COMPLAINT FOR
FORFEITURE

17 By way of complaint against the Defendant listed in the caption above, the
18 United States of America alleges:

19 1. This Court has jurisdiction over this action by virtue of the provisions of
20 Title 28, United States Code, Sections 1345 and 1355(a), because the action has been
21 commenced by the United States, and because it is an action for the recovery and
22 enforcement of a forfeiture under an Act of Congress. This Court has *in rem* jurisdiction
23 over the Defendant, because the Defendant was seized in this district, and the acts or
24 omissions giving rise to the forfeiture of the Defendant occurred in this district.

25 2. Venue is proper in this district pursuant to Title 28, United States Code,
26 Section 1395 because the Defendant was found and is located in this district. Venue is also
27 proper in this district pursuant to Title 28, United States Code, Section 1355(b) because the
28 acts and omissions giving rise to this forfeiture action occurred in this district.

The SENTRI Violations

3. The United States Customs and Border Protection (“CBP”), is an agency within the United States Department of Homeland Security. CBP is the nation’s comprehensive border security agency with a focus on maintaining the nation’s boundaries and ports of entry by developing seamless security procedures and ensuring compliance with the nations’ immigration, health, and international trade law regulations.

4. To facilitate efficient processing of traffic arriving in the United States through ports of entry on the United States land borders, CBP has developed a trusted-traveler program known as the Secure Electronic Network for Travelers Rapid Inspections (“SENTRI”). SENTRI allows for expedited clearance for pre-approved, low-risk travelers upon arrival in the United States, through dedicated special inspection lanes at ports of entry.

5. Individuals who wish to be enrolled in the SENTRI program must submit an application, undergo a background investigation, and appear for a personal interview. As early as June 2014, CBP’s official website has indicated that individuals may be ineligible for the SENTRI program, if among other things, they have been convicted of any criminal offense or have pending criminal charges or outstanding warrants (to include driving under the influence).¹

6. SENTRI lanes are reserved strictly for SENTRI cardholders. To maintain the trusted-traveler program’s integrity, and to continue lowering wait times for the SENTRI lanes, CBP has prioritized disincentivizing non-SENTRI travelers from using the SENTRI program’s dedicated lanes. CBP identifies this conduct as SENTRI No Tag violations. CBP has disincentivized SENTRI No Tag violations by first having CBP officers issue warnings to violators of possible penalties for repeated violations. CBP officers do in fact assess penalties to repeat violators. The penalties for SENTRI No Tag violations have been codified in Title 19, United States Code, Sections 1436 (b) and 1433.

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¹ <https://web.archive.org/web/20140606033050/http://www.cbp.gov/travel/trusted-traveler-programs/sentri/sentri-eligibility> (last reviewed November 4, 2019); See also <https://www.cbp.gov/travel/trusted-traveler-programs/sentri/eligibility> (last reviewed November 4, 2019).

1 7. CBP is responsible for operating the San Ysidro, California Port of Entry,
2 Otay Mesa, California Port of Entry and the Calexico, California Port of Entry, which all
3 participate in the SENTRI program, and contain SENTRI dedicated lanes.

4 8. On or about February 6, 2015, Ladislav Teshale Sucik (“Sucik”), a
5 United States citizen, entered into the United States from Mexico, through a SENTRI lane
6 at the San Ysidro Port of Entry. Sucik was not, and had never been enrolled in the SENTRI
7 program. A CBP officer warned Sucik about possible future penalties for continuing to
8 use the SENTRI lane without being enrolled in SENTRI. The CBP officer did not issue a
9 penalty or seize Sucik’s vehicle.

10 9. On or about February 7, 2015, Sucik submitted a SENTRI membership
11 application to CBP. In his application, Sucik noted that he had two criminal convictions.
12 Specifically, Sucik had been convicted for reckless driving in 2009 and DUI in 2012.
13 On March 30, 2015, CBP sent a letter to Sucik, which stated that Sucik’s application for
14 membership in SENTRI was rejected, due to Sucik’s criminal convictions.

15 10. On or about April 20, 2016, approximately one month after receiving the
16 SENTRI membership rejection letter from CBP, Sucik entered into the United States from
17 Mexico through a SENTRI lane at the Calexico Port of Entry. A CBP officer informed
18 Sucik of the requirement to be enrolled in the SENTRI program to use the SENTRI lane.
19 The CBP officer did not issue a penalty or seize Sucik’s vehicle.

20 11. On or about August 24, 2016, Sucik wrote a letter to CBP, requesting an
21 appeal of the denial of his SENTRI application. Sucik also sent an electronic mail
22 communication to CBP, wherein he inquired as to the status of the SENTRI appeal. On or
23 about April 14, 2017, the CBP Ombudsman’s office sustained the denial of Sucik’s
24 SENTRI program application.

25 12. On or about November 18, 2017, after Sucik’s SENTRI application denial
26 was sustained by the CBP Ombudsman’s office, Sucik entered into the United States from
27 Mexico through a SENTRI lane at the San Ysidro Port of Entry. Sucik told a CBP officer
28 that he drove through the SENTRI lane on purpose. The CBP officer informed Sucik that

1 any subsequent unauthorized use of the SENTRI lanes would constitute a violation and
2 could result in fines, penalties, and/or seizure of the vehicle. The CBP officer did not issue
3 a penalty or seize Sucik's vehicle.

4 13. On or about July 19, 2019, after having been warned on multiple prior
5 occasions about the consequences of continuing to use SENTRI lanes without admission
6 into the program, Sucik entered into the United States from Mexico through a SENTRI
7 Lane at the San Ysidro Port of Entry. Sucik entered into the SENTRI lane, while driving
8 a vehicle. The CBP officer at the SENTRI lane identified the vehicle Sucik was driving as
9 the Defendant. The CBP officer identified the vehicle as the Defendant, by among other
10 things, observing the license plate on the vehicle and observing the aesthetic features on
11 the vehicle. Sucik admitted to the CBP officer that he had previously used the SENTRI
12 lane to cross into the United States from Mexico. The CBP officer at the SENTRI lane
13 received a computer generated alert indicating that this was Sucik's third (3rd) SENTRI
14 violation. Sucik was referred to secondary inspection. In secondary inspection, a
15 CBP officer performed a vehicle seizure on the Defendant, for a SENTRI No Tag violation.
16 Sucik was also assessed a penalty of \$5,000 USD for a SENTRI No Tag violation, and was
17 provided payment instructions. Sucik was presented with Customs Form 4609 and
18 Election of Proceedings, which he refused to sign without an attorney present. A CBP
19 officer advised Sucik that Sucik would be assessed a fine of \$10,000 for any subsequent
20 SENTRI No Tag violations.

21 14. The current outstanding balance on Sucik's penalty is approximately \$4,750
22 USD.

23 15. Sucik is not the registered owner of the Defendant. On or about July 22, 2019,
24 Sucik sent a letter to CBP, stating that while the Defendant is not registered in his name,
25 he had just purchased it, and was on his way to register it. Sucik later sent additional
26 supporting documentation to CBP to support his assertion.

27 //

28 //

COUNT 1

2005 INFINITY FX35, CA. LICENSE 6GYJ314, VIN: JNRAS08U75X109043

16. The allegations contained in paragraphs 1 through 15 above are incorporated herein by reference and included as a part hereof.

17. The Defendant constitutes a conveyance used in connection with a violation of Title 19, United States Code, Section 1433, which requires the person in charge of an arriving vehicle to arrive only at border crossing points designated by the U.S. Department of Homeland Security, and present the vehicle, and all persons and merchandise, for inspection.

18. By virtue of the aforementioned acts and premises alleged herein, either singly or in combination, the Defendant is subject to forfeiture under Title 19, United States Code, Section 1436(b).

The Defendant is in the custody of the United States, having been seized pursuant to legal process prior to the commencement of this action. The United States respectfully requests the Court authorize the United States Customs and Border Protection (or its designee) to take custody and control of the Defendant pursuant to Rule G(3)(b) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

WHEREFORE, the United States prays that due process issue to enforce the forfeiture of the Defendant, and that due notice be given to all interested parties to appear and show cause why said forfeiture should not be declared.

DATED: December 4, 2019

ROBERT S. BREWER, JR.
United States Attorney

s/David J. Rawls

DAVID J. RAWLS
Assistant U.S. Attorney

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

19CV2311 DMS BGS

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

AUSA David J. Rawls, Phone: (619) 546-7966

USAO, 880 Front Street, Room 6293, San Diego, CA 92101-8893

DEFENDANTS2005 INFINITY FX35, CA. LICENSE 6GYJ314,
VIN: JNRAS08U75X109043

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input checked="" type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify) _____
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

19 U.S.C. Section 1433

Brief description of cause:
Failure to Report Arrival**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

12/04/2019

s/ David J. Rawls

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

VERIFICATION

I, Nicolas Gonzales Jr, state and declare as follows:

1. I am an officer with the United States Customs and Border Protection, and have read reports and talked to the federal law enforcement officers involved in this investigation.

2. I have read the foregoing Complaint For Forfeiture and know its contents.

3. The facts set forth in the Complaint For Forfeiture are based upon my own knowledge or were facts furnished to me by official Government sources.

Based on this information, I believe the allegations in the Complaint For Forfeiture to be true.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge and belief.

Executed on November 14, 2019.



Nicolas Gonzales Jr /CBP Supervisory Officer
UNITED STATES CUSTOMS AND BORDER PROTECTION